

REMARKS**I. Response to the Office Action mailed on September 28, 2005 – Notice of Non-Compliant Amendment*****A. Non-Compliant Amendment Interview***

Initially, Applicants thank Primary Examiner Garg for the telephone interview granted and conducted on October 5, 2005. In the interview, Applicants' representatives presented arguments directed to the inappropriateness of the Examiner's imposition of a restriction resulting in the non-compliance of the previous Amendment and Response mailed on July 15, 2005 (in response to the Non-final Office Action mailed on April 15, 2005). In particular, Applicants pointed out that all claimed embodiments maintained relation to the original election of "Invention I" (made pursuant to a response received by the Examiner on October 31, 2003), which concern, generally, "matching offers from buyers and sellers." All amendments submitted in the Amendment and Response mailed on July 15, 2005 were indeed directed to a particular manner of "matching offers from buyers and sellers." The Examiner, however, did not agree that the claims were appropriately directed to the same invention as elected.

Although agreement was not reached regarding the appropriateness of the Examiner's restriction, and although Applicants maintain their traversal of the Examiner's restriction, Applicants nonetheless greatly appreciate the Examiner's time and believe that the new amendments presented herein will be much more likely to comply with the Examiner's requirements. In particular, all amendments presented herein are specifically tailored to "matching offers from buyers and sellers."

B. Status

In the interview of October 5, 2005, the Examiner confirmed that the Amendment and Response mailed on July 15, 2005 (in response to the Non-final Office Action mailed on April 15, 2005) that was deemed non-compliant, *was not entered* (pursuant to MPEP §821.03; Form paragraph 8.26). Accordingly, the remainder of the Remarks presented herein are directed to addressing the Non-final Office Action mailed on April 15, 2005.

II. Response to the Office Action mailed on April 15, 2005

A. Introduction

Claims **95-108** are currently pending in the present application. Claims **95** and **106-108** are independent. All claims stand rejected. In particular, claims **95-97** and **99-108** stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by U.S. Patent No. 6,598,026 (hereinafter "Ojha"), and claim **98** stands rejected under §103(a) as being allegedly unpatentable over Ojha in view of U.S. Patent No. 6,012,925 (hereinafter "Kelly").

Upon entry of this amendment, which is respectfully requested, claims **98-108** will be cancelled without prejudice or disclaimer, claims **95-97** will be amended and new claims **109-137** will be added to more clearly and distinctly point out some embodiments.

No new matter is believed to be introduced by this amendment. Support for the amendments and new claims is referenced herein, as appropriate.

Applicants hereby respectfully request reexamination and reconsideration of the pending claims in light of the amendments and remarks provided herein and in accordance with 37 C.F.R. §1.112.

B. Interview Summary

Applicants thank Primary Examiner Garg for the telephone interview granted and conducted on July 12, 2005. In the interview, Applicants' representative described some differences between Ojha and currently claimed embodiments. Matching of buyers and sellers via a controller, such as where the matching indicates to the buyer a particular product for sale, was discussed. Matching criteria such as buyer and seller price information and additional criteria was also described. Examiner Garg indicated that clarification of some limitations in the currently claimed embodiments would be fully considered with respect to the applicability of Ojha.

C. The Examiner's Rejections

All pending claims stand rejected. In particular, claims **95-97** and **99-108** stand rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Ojha, and claim **98**

stands rejected under §103(a) as being allegedly unpatentable over Ojha in view of Kelly. Applicants respectfully traverse these grounds for rejection, with respect to amended claims **95-97** and new claims **109-137**, as follows.

1. Rejections Under §102(e) – Ojha

a) The cited reference fails to teach or suggest: *determining, based on the one or more characteristics of the item, a quality class of the item*

Applicants respectfully assert that Ojha fails to teach or suggest limitations of amended claims **95-97**. In particular, Ojha fails to teach or suggest *determining, based on the one or more characteristics of the item, a quality class of the item*.

Ojha generally describes a system for facilitating “traditional negotiations” between buyers and sellers. (Ojha, Col. 2, lines 47-50). Ojha, for example, allows buyers to search a proprietary database to identify sellers and products that may be of interest to the buyer. (Ojha, Col. 9, lines 37-40). The buyer in Ojha may then submit bids and/or conditional purchase offers for specific products identified by the buyer’s search. (Ojha, Col. 3, lines 6-24; Col. 5, lines 43-44).

Ojha does not, however, contemplate determining a “quality class” for an item sold by a seller (much less matching a buyer’s request based on such a quality class). Nowhere, for example, does Ojha describe any information related to the quality of an item for sale, much less determining such quality information based on characteristics of the item.

In contrast, currently claimed embodiments (such as those recited by amended claims **95-97**) determine quality classes associated with items offered for sale (see, Applicants’ specification, pg. 12, lines 4-8). This allows, for example, a buyer to be matched with a seller that is offering an item of the same or similar quality as that desired by the buyer (see, Applicants’ specification, pg. 15, lines 23-30). The quality may, for example, be based on various characteristics of the item such as “a number of features, item manufacturers, an item condition, and/or accessories associated with an item.” (Applicant’s specification, pg. 20, lines 16-17).

Accordingly, at least because Ojha fails to teach or suggest *determining, based on the one or more characteristics of the item, a quality class of the item*, Ojha fails to anticipate amended claims **95-97**. Applicants therefore respectfully request that §102(e) rejections of claims **95-97** be withdrawn.

b) The cited reference fails to teach or suggest: *determining that the buyer information does not match the seller information*

Applicants respectfully assert that Ohja fails to teach or suggest limitations of new claims **109-137**. In particular, Ojha fails to teach or suggest *determining that the buyer information **does not match** the seller information*. (a limitation generally recited by each of the above-referenced new claims)

Ojha does not, for example, contemplate the case where no match can be made between the buyer and a seller (*e.g.*, based on the product desired by the buyer). Ojha does not, for example, match *stored buyer information* with seller information. In other words, in the case that a buyer in Ojha can't find a desired product, no matching of any sort occurs in Ojha. Nor does Ojha contemplate storing the buyer offer information (as equated by the Examiner to the search terms in Ojha). Since such information is utilized only to locate available products in Ojha, for example, Ojha does not contemplate a need to store such information.

In contrast, currently claimed embodiments may determine that no match can be made between a buyer and sellers (Applicants' specification, pg. 12, line 26). The buyer offer information may then, for example, be stored so that an attempt may be made to find a match at a later time. (Applicants' specification, pg. 22, lines 8-9). A buyer may thus, for example, be more likely to find a desired product because new sellers and/or new products may be compared to the buyer's information as they become available (*e.g.*, in the absence of the buyer).

Accordingly, at least because Ojha fails to teach or suggest *determining that the buyer information **does not match** the seller information*, Ojha fails to anticipate new claims **109-137**. Applicants therefore respectfully request that new claims **109-137** be allowed.

c) The cited reference fails to teach or suggest other limitations

Applicants respectfully assert that Ohja fails to teach or suggest various other limitations of the pending claims. Ojha does not describe, for example (i) matching that comprises identifying a minimum price associated with the specific product offered for sale by the seller, and determining, by the controller, that the minimum price associated with the specific product is less than or equal to the maximum price committed to by the buyer (new claim 114), (ii) matching that comprises identifying a minimum price associated with the specific product offered for sale by the seller, determining, by the controller, that the minimum price associated with the specific product offered for sale by the seller is greater than the maximum price that the buyer committed to pay, and calculating, by the controller, a gap amount by which the minimum price associated with the specific product offered for sale by the seller exceeds the maximum price that the buyer committed to pay (new claim 115), (iii) identifying, by the controller, a first amount to be added to the maximum price that the buyer committed to pay, wherein the first amount is equal to or greater than the gap amount (new claim 116), (iv) offering to provide the first amount to the buyer (new claim 117), (v) providing, to the seller, based on the quality class associated with the specific product offered for sale by the seller, a suggested price for the specific product (new claim 124), or (vii) determining whether to perform the determining that the additional buyer information corresponds to the new seller database record (new claim 129).

At least for these reasons, Applicants respectfully request that new dependent claims 114-118, 124-125, and 129-131 be allowed.

2. Rejections Under §103(a) – Ojha in view of Kelly

Applicants respectfully assert that Kelly simply fails to make up for the deficiencies of Ojha. Kelly does not, for example, teach or suggest (i) *determining, based on the one or more characteristics of the item, a quality class of the item*, or (ii) *determining that the buyer information does not match the seller information*.

At least for these reasons, Applicants respectfully request that amended claims **95-97** and new claims **109-137** be allowed.

III. Conclusion

At least for the foregoing reasons, it is submitted that all claims are now in condition for allowance, or in better form for appeal, and the Examiner's early re-examination and reconsideration are respectfully requested.

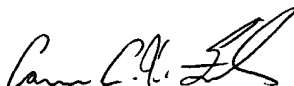
Alternatively, if there remain any questions regarding the present application or the cited reference, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Carson C.K. Fincham at telephone number 203-461-7017 or via electronic mail at cfincham@walkerdigital.com, at the Examiner's convenience.

IV. Authorization to Charge Appropriate Fees & Petition for Extension of Time

Although Applicants do not believe that any fees are necessary for this response, or that any petitions for extension of time are necessary, please grant any petition for extension of time required to make this Response timely, and please charge any attendant and/or appropriate fees to deposit account 50-0271. Please also credit any overpayment to the same account

Respectfully submitted,

October 18, 2005
Date



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